Finally, a few states have the fee tail still subsisting,[11] but permit the owner to convey the property in fee simple, usually by an ordinary deed.[12]

That the doctrine and learning of fee tail has not become obsolete in these last of jurisdictions is indicated by the recent case of *Hazzard* v. *Hazzard* (Del. 1915) 94 Atl. 905, where the question arose as to what estate passed to a purchaser at a sale on execution of a fee tail estate. It was held that under the Delaware statutes the purchaser acquired a fee simple estate. In others of the states where the estate tail still exists, the statutes provide that a purchaser on execution or other judicial sale shall acquire a fee simple.[13] In Delaware, however, in addition to the provision that a tenant in tail may alien in fee simple, the only statute bearing on the point is to the effect that in execution sales the grantee shall hold the premises for such estate as the debtor "might or could do at or before the taking thereof in execution."[14] The court read this last phrase, "for such estate as the debtor might or could convey." However we may differ with the court in the matter of a strict reading of the statute, it must be granted that their decision accords with the attitude of our courts generally toward the doctrine of entails with its resultant restraint on the alienability of estates.

SUNDAY LAWS AND THEIR EFFECT ON CONTRACTS.—The common law of England made no distinction between Sunday and secular days as to labor or the transaction of business. But in 1668 a statute[1] was enacted forbidding any person to exercise any worldly labor or business or work of their ordinary callings on the Lord's day, works of necessity and charity alone excepted.[2] This statute was taken over by the states as part of their common law[3] and was further strengthened by statutory enactments. It formed a nucleus around which there rapidly grew up a formidable body of Sunday prohibitions. The constitutionality of these statutes has frequently been attacked on the ground of restricting freedom of religious worship. This view, however, has repeatedly been denied by both state and Federal courts and the statutes

[11] *In re* Tillinghast (1903) 25 R. I. 338; Whittaker *v.* Whittaker (1868) 99 Mass. 364; Caulk's Lessee *v.* Caulk (1902) 19 Del. 528; see Me. Rev. Stat. 1903, p. 658, § 7.

[12] Mass. Rev. Laws 1902, p. 1226, § 24; R. I. Gen. Laws 1909, c. 252, § 14; Del. Rev. Code 1915, § 3235; Me. Rev. Stat. 1903, *supra*.

[13] Mass. Rev. Laws 1902, p. 1603, § 2; R. I. Gen. Laws 1909, c. 252, § 5; Me. Rev. Stat. 1903, p. 669, § 6.

[14] Del. Rev. Code 1915, § 4365.

[1] Stat. 29 Car. II, c. 7, § 1.

[2] The English courts in a large measure interpreted away this statute by holding that it applied only to the exercise of a man's regular vocation, King *v.* Whitnash (1827) 7 B. & C. 596; Drury *v.* Defontaine (1808) 1 Taunt. *131; Scarfe *v.* Morgan (1838) 4 M. & W. *270, or that it applied only to the lower classes, Queen *v.* Cleworth (1863) 4 B. & S. *927, or by some other evasion. Bloxsome *v.* Williams (1824) 1 C. & P. 294; Williams *v.* Paul (1830) 6 Bing. 653; but see Simpson *v.* Nicholls (1838) 3 M. & W. *240.

[3] See Crabtree *v.* Whiteselle (1885) 65 Tex. 111.

have been upheld as a valid exercise of the police power.[4] Nevertheless, the American courts, like those of England, were not slow to perceive the hardships that must result from a too rigid application of these laws, and consequently limited them to the narrowest possible construction.[5] Moreover, a large bulk of statutes of this nature now existing consists of exceptions to the old laws. Thus, through judicial interpretation and legislative restriction, as well as the familiar disinclination of executive authority to insist upon enforcement, Sunday laws have become, in most jurisdictions, of little consequence.

There still remain, however, certain well recognized effects upon contractual obligations. Where a contract, made on Sunday, remains wholly executory, it is a simple matter for the courts, on the ground of illegality of its inception, to refuse to aid either party in enforcing it.[6] But, where either or both of the parties have performed in whole or in part, a different situation arises. Some courts have held that, since the entire transaction was illegal, the parties must be left exactly where they were found.[7] The injustice that may result from such a doctrine is at once manifest in a case where only one party has performed. Not only is the promisee unable to enforce the contract, but he is also forced to lose the consideration which he had advanced. To avoid this harsh result a number of theories have been resorted to. Some courts have held that the retention of the consideration gives rise to an implied assumpsit;[8] others that, though both parties may have fully performed, no title has passed because the entire transaction was void, and that either party may therefore return what he has received and demand back what he has given up;[9] and by far the most common theory is that of subsequent ratification.[10] This latter view recognizes the illegality of the original transaction; and is consistent with a refusal to interfere for the purpose of aiding either party to enforce his contract where neither side has performed, or to repudiate it where both sides have fully performed. At the same time it insists upon the binding force of any subsequent promise made on a secular

[4]Hennington *v.* Georgia (1896) 163 U. S. 299; Petit *v.* Minnesota (1900) 177 U. S. 164; Lindenmuller *v.* People (N. Y. 1861) 33 Barb. 548; State *v.* Havnor (1896) 149 N. Y. 195.

[5]Flagg *v.* Millbury (1849) 58 Mass. 243; Commonwealth *v.* Knox (1809) 6 Mass. 76; Frost *v.* Plumb (1873) 40 Conn. 111; Commonwealth *v.* Nesbit (1859) 34 Pa. 398. To this general policy of the courts there was one notable exception. The courts of one state added to the most stringent enforcement of Sunday laws a misapplication of the doctrine of proximate cause, thereby producing a deplorable result. See Day *v.* Hyland etc. Co. (1883) 135 Mass. 113; Read *v.* Boston etc. R. R. (1885) 140 Mass. 199. The force of these cases has since been destroyed by statutory enactments. Mass. Rev. L., c. 98.

[6]See 15 Columbia Law Rev., 175, 176; Holman *v.* Johnson (1775) 1 Cowp. 341, 343.

[7]Perkins *v.* Jones (1866) 26 Ind. 499; Finn *v.* Donahue (1868) 35 Conn. 216; Troewert *v.* Decker (1881) 51 Wis. 46.

[8]Broadley *v.* Rea (1867) 96 Mass. 20; aff'd. (1869) 103 Mass. 188; *contra,* Troewert *v.* Decker, *supra.*

[9]Brazee v. Bryant (1883) 50 Mich. 136.

[10]Cook *v.* Forker (1899) 193 Pa. 461; Banks *v.* Werts (1859) 13 Ind. 203; Bowlin Liquor Co. *v.* Brandenburg (1906) 130 Iowa 220. An interesting variation of the theory of ratification is advanced by the Kentucky courts which hold that the consideration for a note, executed and delivered on Sunday, must be returned as a condition precedent to

day, whether such promise be express or implied, and treats the Sunday acts as mere preliminary negotiations. The one difficulty that the theory of ratification, like that of implied assumpsit, presents, is that of past consideration. This may perhaps be avoided by saying that the passing of title furnished the consideration, and that this did not happen until the time of the subsequent ratification, since all the acts done on Sunday were void. But unless the subsequent ratification be express, it is difficult in most cases to find any one point of time when it can be said that title did pass.

Whatever course of reasoning may be adopted to avoid the harshness of the application of Sunday laws to unilateral contracts, the most logical course for the courts to pursue where both parties have fully performed, is to adopt a *laissez faire* policy, refusing to assist either party to obtain a rescission. Nor does it appear that such a policy will fail to do justice in the majority of cases. In the recent case of *Wilson* v. *Calhoun* (Iowa 1915) 151 N. W. 1087, it is stated that where a deed is fully executed and delivered and the purchase price paid on Sunday, neither party may rescind and recover back his consideration on the ground that the transaction took place on Sunday. This attitude of the court is sound in theory and is fully supported by authority. It is one thing to hold that a court will not lend its aid to enforcing a contract made on Sunday; it is quite a different thing to say that the court will aid the participant in such a transaction to repudiate his acts and place himself in *statu quo* merely because he has made a bad bargain, and this the court properly refused to do.

ACTIONS FOR WRONGFUL DEATH.—At common law there was no recovery where death resulted from injury to the person.[1] To remedy this defect, various statutes giving actions in specific cases have been passed, the earliest being in Massachusetts in 1668.[2] In 1846, in England, there was enacted a statute entitled "An Act for Compensating the Families of Persons Killed by Accident",[3] better known as Lord Campbell's Act. In substance this act gave a right of action for wrongful death, to the personal representative for the benefit of the family of the deceased, wherever the decedent would have been able to maintain one, had he lived. Starting with New York in 1847, practically all of the states of the United States have copied the English act, frequently incorporating its provisions into their laws almost verbatim.[4] Side by side with these statutes, have been enacted others giving a right of survival to personal actions which had been or could have been begun by the person injured, prior to his decease.[5]

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avoiding the note. Hale *v.* Harris (Ky. 1906) 91 S. W. 660. A few courts, while accepting the theory of ratification, nevertheless maintain that such ratification must be in express terms. Reeves *v.* Butcher (1865) 31 N. J. L. 224; *contra,* Adams *v.* Gay (1847) 19 Vt. 358; Planters Fire Ins. Co. *v.* Ford (1913) 106 Ark. 568.

[1]Higgins *v.* Butcher (1606) Yelv. 89; Baker *v.* Bolton (1808) 1 Camp. 493.

[2]Tiffany, Death by Wrongful Act (2nd ed.) § 4 n. 5.

[3]9 and 10 Vict., c. 93; Tiffany, Death by Wrongful Act (2nd ed.) §§ 20, 21.

[4]Tiffany, Death by Wrongful Act (2nd ed.) § 19.

[5]Tiffany, Death by Wrongful Act (2nd ed.) § 26; see note in 8 L. R. A. [N. S.] 384.